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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
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12 Beauty Business Builder, LLC, a Delaware)
13 limited liability company,

14 Plaintiff,

15 v.

16 Skin Gym, Inc., a California corporation;)
17 J.C. Penney Co., Inc. a Delaware)
18 corporation; Ulta Salon, Cosmetics &)
19 Fragrance, Inc., a Delaware corporation;)
20 Bloomingdale's, LLC, an Ohio limited)
21 liability company; Bloomingdales.com,)
22 LLC, an Ohio limited liability company;)
23 Sephora USA, Inc., a Michigan corporation;)
24 Urban Outfitters, Inc. a Pennsylvania)
25 corporation d/b/a Anthropologie; Planet)
26 Beauty, Inc., a California corporation; Bliss)
27 Beauty Center, LLC, a California Limited)
28 liability company,

Defendants.

AND RELATED COUNTERCLAIM.

AND RELATED THIRD PARTY
COMPLAINT.

Case No. 2:22-cv-03352-RSWL-GJS

(Assigned to the Honorable Ronald S.W.
Lew)

PROTECTIVE ORDER

Action Filed: May 17, 2022
Pre-Trial Conf.: August 8, 2023
Trial Date: September 5, 2023

1 On stipulation of the Parties, the Court enters a Protective Order in this matter as
2 follows:

3 **1. PURPOSES AND LIMITATIONS**

4 Discovery in this action is likely to involve production of confidential,
5 proprietary, or private information for which special protection from public disclosure
6 and from use for any purpose other than prosecuting this litigation may be warranted.
7 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
8 Stipulated Protective Order. The parties acknowledge that this Order does not confer
9 blanket protections on all disclosures or responses to discovery and that the protection
10 it affords from public disclosure and use extends only to the limited information or
11 items that are entitled to confidential treatment under the applicable legal principles.
12 The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
13 Protective Order does not entitle them to file confidential information under seal; Civil
14 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
15 will be applied when a party seeks permission from the Court to file material under seal.

16 **GOOD CAUSE STATEMENT**

17 This action is likely to involve trade secrets and other valuable proprietary
18 information for which special protection from public disclosure and from use for any
19 purpose other than prosecution of this action is warranted. Such confidential and
20 proprietary materials and information consist of, among other things, customer and
21 pricing lists, customer communications, sales summaries, pricing, internal business
22 strategies, documents revealing costs, financial projections, vendors, marketing plans,
23 expansion plans, employee information, and other confidential business or financial
24 information, or information regarding confidential business practices, the disclosure of
25 which could give a competitor an unfair business advantage. The confidential
26 information at issue is generally unavailable to the public and may be privileged or
27 otherwise protected from disclosure under state or federal statutes, court rules, case
28 decisions, or common law.

1 Accordingly, to expedite the flow of information, to facilitate the prompt
2 resolution of disputes over confidentiality of discovery materials, to adequately protect
3 information the parties are entitled to keep confidential, to ensure that the parties are
4 permitted reasonable necessary uses of such material in preparation for and in the
5 conduct of trial, to address their handling at the end of the litigation, and serve the ends
6 of justice, a protective order for such information is justified in this matter. It is the
7 intent of the parties that information will not be designated as confidential for tactical
8 reasons and that nothing be so designated without a good faith belief that it has been
9 maintained in a confidential, non-public manner, and there is good cause why it should
10 not be part of the public record of this case.

11 **2. DEFINITIONS**

12 2.1 Action: the above-captioned action pending in this Court, including any
13 related discovery, pretrial, trial, post-trial, or appellate proceedings.

14 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
17 it is generated, stored or maintained) or tangible things that qualify for protection under
18 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
19 Statement.

20 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
21 support staff).

22 2.5 Designating Party: a Party or Non-Party that designates information or
23 items that it produces in disclosures or in responses to discovery as
24 “CONFIDENTIAL.”

25 2.6 Disclosure or Discovery Material: all items or information, regardless of
26 the medium or manner in which it is generated, stored, or maintained (including, among
27 other things, testimony, transcripts, and tangible things), that are produced or generated
28 in disclosures or responses to discovery in this matter.

2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this Action.

2.8 “HIGHLY CONFIDENTIAL” or “ATTORNEY EYES ONLY” Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement for which disclosures to another party is likely to result in harm to the Designating Party.

2.9 House Counsel: attorneys who are employees or independent contractors of a Party to this Action. House Counsel does not include Outside Counsel of Record.

2.10 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this Action.

2.11 Outside Counsel of Record: attorneys who are retained to represent or advise a Party to this Action and have appeared in this Action on behalf of that Party or are affiliated with a law firm that has appeared on behalf of that Party, including support staff.

2.12 Party: any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this Action.

2.14 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.15 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “ATTORNEY EYES ONLY.”

1 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3 **3. SCOPE**

4 The protections conferred by this Stipulation and Order cover not only Protected
5 Material (as defined above), but also (1) any information copied or extracted from
6 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
7 Material; and (3) any testimony, conversations, or presentations by Parties or their
8 Counsel that might reveal Protected Material.

9 Any use of Protected Material at trial shall be governed by the orders of the trial
10 judge. This Order does not govern the use of Protected Material at trial.

11 **4. DURATION**

12 Once the Action proceeds to trial, all of the Court-filed information to be
13 introduced that was previously designated as Protected Material pursuant to this Order
14 becomes public and will be presumptively available to all members of the public,
15 including the press, unless compelling reasons supported by specific factual findings to
16 proceed otherwise are made to the trial judge in advance of the trial. *See Kamakana v.*
17 *City and County of Honolulu*, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing
18 “good cause” showing for sealing documents produced in discovery from “compelling
19 reasons” standard when merits-related documents are part of court record).
20 Accordingly, as to Protected Material made part of the Court record, the terms of this
21 Order do not extend beyond the commencement of the trial. However, as to Protected
22 Material not made part of the Court record, this Order shall continue to be binding after
23 the conclusion of this Action.

24 **5. DESIGNATING PROTECTED MATERIAL**

25 5.1 Exercise of Restraint and Care in Designating Material for Protection.

26 Each Party or Non-Party that designates information or items for protection under this
27 Order must take care to limit any such designation to specific material that qualifies
28 under the appropriate standards. The Designating Party must designate for protection

1 only those parts of material, documents, items, or oral or written communications that
2 qualify so that other portions of the material, documents, items, or communications for
3 which protection is not warranted are not swept unjustifiably within the ambit of this
4 Order.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that
6 are shown to be clearly unjustified or that have been made for an improper purpose
7 (e.g., to unnecessarily encumber the case development process or to impose
8 unnecessary expenses and burdens on other parties) may expose the Designating Party
9 to sanctions.

10 If it comes to a Designating Party's attention that information or items that it
11 designated for protection do not qualify for protection, that Designating Party must
12 promptly notify all other Parties that it is withdrawing the inapplicable designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this
14 Order (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated
15 or ordered, Disclosure or Discovery Material that qualifies for protection under this
16 Order must be clearly so designated before the material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic
19 documents, but excluding transcripts of depositions or other pretrial or trial
20 proceedings), that the Producing Party affix, at a minimum, the legend
21 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "ATTORNEY EYES ONLY"
22 (hereinafter "CONFIDENTIAL legend"), to each page that contains protected material.
23 If only a portion or portions of the material on a page qualifies for protection, the
24 Producing Party also must clearly identify the protected portion(s) (e.g., by making
25 appropriate markings in the margins).

26 A Party or Non-Party that makes original documents available for
27 inspection need not designate them for protection until after the inspecting Party has
28 indicated which documents it would like copied and produced. During the inspection

1 and before the designation, all of the material made available for inspection shall be
 2 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents it
 3 wants copied and produced, the Producing Party must determine which documents, or
 4 portions thereof, qualify for protection under this Order. Then, before producing the
 5 specified documents, the Producing Party must affix the “CONFIDENTIAL legend” to
 6 each page that contains Protected Material. If only a portion or portions of the material
 7 on a page qualifies for protection, the Producing Party also must clearly identify the
 8 protected portion(s) (e.g., by making appropriate markings in the margins).

9 (b) for testimony given in depositions that the Designating Party identify
 10 the Disclosure or Discovery Material on the record, before the close of the deposition.

11 (c) for information produced in some form other than documentary and for
 12 any other tangible items, that the Producing Party affix in a prominent place on the
 13 exterior of the container or containers in which the information is stored the
 14 “CONFIDENTIAL legend.” If only a portion or portions of the information warrants
 15 protection, the Producing Party, to the extent practicable, shall identify the protected
 16 portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
 18 failure to designate qualified information or items does not, standing alone, waive the
 19 Designating Party’s right to secure protection under this Order for such material. Upon
 20 timely correction of a designation, the Receiving Party must make reasonable efforts to
 21 assure that the material is treated in accordance with the provisions of this Order.

22 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 24 designation of confidentiality at any time that is consistent with the Court’s Scheduling
 25 Order.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
 27 resolution process under Local Rule 37-1, *et seq.* Any discovery motion must strictly
 28 comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

6.3 Burden. The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Frivolous designations, if not waived or withdrawn upon being challenged, may expose the Designating Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of Section 13 below (FINAL DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom

disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary, provided that they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

7.3 Disclosure of “HIGHLY CONFIDENTIAL” or “ATTORNEY EYES ONLY” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL” or “ATTORNEY EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action.

(b) Experts (as defined in this Order) of the Receiving Party to whom

disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the Court and its personnel;

(d) court reporters and their staff;

(e) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(g) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as Protected Material, that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order. Such notification shall include a copy of this Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected. If the Designating Party seeks a protective order from this Court within 14 days of receiving the notice and accompanying information, the Party served with the subpoena or court order shall not produce any information designated in this action as Protected Material before a determination by the court from which the subpoena or order issued, unless the

1 Party has obtained the Designating Party's permission. The Designating Party shall bear
2 the burden and expense of seeking protection in that court of its Protected Material and
3 nothing in these provisions should be construed as authorizing or encouraging a
4 Receiving Party in this Action to disobey a lawful directive from another court. If the
5 Designating Party does not timely seek a protective order, the Party served with the
6 subpoena or court order may produce responsive information designated in this action
7 as Protected Material as required by the subpoena or court order.

8 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
9 **PRODUCED IN THIS LITIGATION**

10 (a) The terms of this Order are applicable to information produced by a Non-
11 Party in this Action and designated as Protected Material. Such information produced
12 by Non-Parties in connection with this Action is protected by the remedies and relief
13 provided by this Order. Nothing in these provisions should be construed as prohibiting
14 a Non-Party from seeking additional protections.

15 (b) In the event that a Party is required, by a valid discovery request, to produce
16 a Non-Party's confidential information in its possession, and the Party is subject to an
17 agreement with the Non-Party not to produce the Non-Party's confidential information,
18 then the Party shall:

19 (1) promptly notify in writing the Requesting Party and the Non-Party that
20 some or all of the information requested is subject to a confidentiality agreement with
21 a Non-Party;

22 (2) promptly provide the Non-Party with a copy of the Protective Order in
23 this Action, the relevant discovery request(s), and a reasonably specific description of
24 the information requested; and

25 (3) make the information requested available for inspection by the Non-
26 Party, if requested.

27 (c) If the Non-Party fails to seek a protective order from this Court within 14 days
28 of receiving the notice and accompanying information, the Receiving Party may

1 produce the Non-Party's confidential information responsive to the discovery request.
2 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
3 any information in its possession or control that is subject to the confidentiality
4 agreement with the Non-Party before a determination by the Court. Absent a court order
5 to the contrary, the Non-Party shall bear the burden and expense of seeking protection
6 in this Court of its Protected Material.

7 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
9 Protected Material to any person or in any circumstance not authorized under this Order,
10 the Receiving Party must immediately (a) notify in writing the Designating Party of the
11 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of
12 the Protected Material, (c) inform the person or persons to whom unauthorized
13 disclosures were made of all the terms of this Order, and (d) request such person or
14 persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached
15 hereto as Exhibit A.

16 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
17 **PROTECTED MATERIAL**

18 When a Producing Party gives notice to Receiving Parties that certain
19 inadvertently produced material is subject to a claim of privilege or other protection,
20 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
21 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
22 may be established in an e-discovery order that provides for production without prior
23 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
24 Parties reach an agreement on the effect of disclosure of a communication or
25 information covered by the attorney-client privilege or work product protection, the
26 Parties may incorporate their agreement in the stipulated protective order submitted to
27 the Court.

28 ///

1 **12. MISCELLANEOUS**

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
3 person to seek its modification by the Court in the future.

4 12.2 Right to Assert Other Objections. By stipulating to the entry of this Order,
5 no Party waives any right it otherwise would have to object to disclosing or producing
6 any information or item on any ground not addressed in this Order. Similarly, no Party
7 waives any right to object on any ground to use in evidence of any of the material
8 covered by this Order.

9 12.3 Filing Protected Material. A Party that seeks to file under seal any
10 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
11 only be filed under seal pursuant to a court order authorizing the sealing of the specific
12 Protected Material at issue; good cause must be shown in the request to file under seal.
13 If a Party's request to file Protected Material under seal is denied by the Court, then the
14 Receiving Party may file the information in the public record unless otherwise
15 instructed by the Court.

16 **13. FINAL DISPOSITION**

17 After the final disposition of this Action, within 60 days of a written request by
18 the Designating Party, each Receiving Party must return all Protected Material to the
19 Producing Party or destroy such material. As used in this subdivision, "all Protected
20 Material" includes all copies, abstracts, compilations, summaries, and any other format
21 reproducing or capturing any of the Protected Material. Whether the Protected Material
22 is returned or destroyed, the Receiving Party must submit a written certification to the
23 Producing Party (and, if not the same person or entity, to the Designating Party) by the
24 60 day deadline that (1) identifies (by category, where appropriate) all the Protected
25 Material that was returned or destroyed and (2) affirms that the Receiving Party has not
26 retained any copies, abstracts, compilations, summaries or any other format
27 reproducing or capturing any of the Protected Material. Notwithstanding this provision,
28 counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,

1 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and
2 trial exhibits, expert reports, attorney work product, and consultant and expert work
3 product, even if such materials contain Protected Material. Any such archival copies
4 that contain or constitute Protected Material remain subject to this Order as set forth in
5 Section 4 (DURATION).

6 **14.** Any violation of this Order may be punished by any and all appropriate measures
7 including, without limitation, contempt proceedings and/or monetary sanctions.

8 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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10 DATED: October 25, 2022

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12 _____
13 Honorable Gail J. Standish
14 United States Magistrate Judge
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EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury that
 I have read in its entirety and understand the foregoing Protective Order issued by the
 United States District Court for the Central District of California in the case of *Beauty
 Business Builder, LLC v. Skin Gym, Inc., et al.*, Case No. 2:22-cv-03352-RSWL-GJS
 (“the Action”). I agree to comply with and to be bound by all the terms of the Protective
 Order and I understand and acknowledge that failure to so comply could expose me to
 sanctions and punishment in the nature of contempt. I solemnly promise that I will not
 disclose in any manner any information or item that is subject to the Protective Order
 to any person or entity except in strict compliance with the provisions of the Protective
 Order.

I further agree to submit to the jurisdiction of the United States District Court for
 the Central District of California for the purpose of enforcing the terms of the Protective
 Order, even if such enforcement proceedings occur after termination of the Action. I
 hereby appoint _____ [print or type full name] of
 _____ [print or type full
 address and telephone number] as my California agent for service of process in
 connection with the Action or any proceedings related to enforcement of the Protective
 Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____